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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

P.F.,

Petitioner,

v.

THE SUPERIOR COURT OF CONTRA
COSTA COUNTY,

Respondent;

CONTRA COSTA COUNTY CHILDREN
AND FAMILY SERVICES BUREAU et
al.,

Real Parties in Interest.

A145577

(Contra Costa County
Super. Ct. No. J14-00830)

P.F., biological father of approximately one-year old infant I.F., challenges the juvenile court's orders denying his request to be designated I.F.'s legally presumed father, his request for reunification services, and to set the matter for a hearing pursuant to Welfare and Institutions Code section 366.26.¹ We deny the petition and dissolve the stay previously issued by this court.

¹ Unless otherwise noted, all statutory references are to the Welfare and Institutions Code.

FACTUAL AND PROCEDURAL BACKGROUND

The following are the facts relevant to P.F.'s (Biological Father) claims.

I.F. (Infant) tested positive for methamphetamine at birth on July 28, 2014. Three days later, the Contra Costa County Social Services Agency (the Agency) filed a juvenile dependency petition. With respect to Biological Father it alleged that he "has engaged in serious on-going domestic violence that places the child at risk of serious harm," that his substance abuse problem affected his ability to care for the Infant, and on June 20, 2005 he was arrested for drug-related offenses.²

On August 1, 2014, the Agency filed a detention/jurisdiction report recommending that Infant be detained in an out-of-home placement. The report contains conflicting information concerning father's whereabouts at that time. On the one hand, the infant's mother reported that he was in jail. She also said, however, that he could be contacted at a particular phone number and did not know his whereabouts. Mother indicated that he had no stable home. The report lists Biological Father as homeless.

Mother and Biological Father were no longer dating. Mother stated that he used methamphetamine. To her knowledge, he last used it the day she had gone into labor. He was present during labor and he called to check on her and the baby. She did not want Biological Father to be around her son until he became sober, and did not want to be around him herself, so she could be "clean."

The report indicated that Biological Father and Mother's relationship was violent. Biological Father's background check revealed a May 2014 conviction for inflicting corporal injury to a spouse or cohabitant. He was sentenced to 3 years probation with 54 days in jail. On May 23, 2014, the Contra Costa Superior Court issued a restraining order against Biological Father, barring him from any contact with mother and Infant. He was also prohibited from purchasing or possessing a firearm. The report also stated that Biological Father was not obeying the restraining order. At the conclusion of the detention hearing, the juvenile court ordered that Infant be detained because of a

² Although the petition discusses both parents, because the writ petition only involves P.F.'s claims, we will focus on aspects in the record that concern him.

substantial danger to his physical health or emotional well-being, and there was no reasonable means to protect his physical or emotional health without removing him from the parents' physical custody.

Mother entered a no contest plea to the allegations, and the juvenile court sustained the allegations against her. The allegations against Biological Father were dismissed without prejudice. At the dispositional hearing held October 9, 2014, the juvenile court ordered that Infant be placed outside of his mother's home. The juvenile court also determined that Biological Father was Infant's alleged natural father, that reunification services should not be provided to him, and that he was a noncustodial parent who had not requested custody.

The six-month status review report, filed April 17, 2015, states that Biological Father was not listed on Infant's birth certificate. Although, Biological Father first told the social worker on September 24, 2014, that he was Infant's father, he did not appear in the proceedings, and first requested paternity testing in February 2015. Up until that point he was classified as Infant's alleged father. On February 27, 2015, the court ordered a paternity test. On May 29, 2015, the Agency reported that Biological Father's paternity test confirmed he was Infant's biological father.

The disposition report also detailed Biological Father's criminal history. He had misdemeanor convictions for petty theft and vandalism in August 2000, vehicle theft in May 2001, receiving stolen property in June 2001 and January 2006, possession of a controlled substance in February 2002 and in December 2002, and for inflicting corporal injury on a spouse in May 2014. In addition he had felony convictions for vehicle theft in December 2002 and January 2012, for evading a peace officer in February 2005, for possession of a controlled substance in January 2006, for grand theft in January 2007, and for receiving stolen property in November 2008. The report listed numerous other arrests from March 2000 through January 2015 for a variety of crimes including burglary, petty theft, disorderly conduct, hit and run, possession/manufacture/sale of dangerous weapons, and robbery.

According to the report, Biological Father wanted to be involved in Infant's life, despite the fact that he was incarcerated in early 2015. The record reveals that on November 5, 2014, December 10, 2014, and December 12, 2014, Biological Father called the social worker. The social worker attempted to return at least two of his calls, but the phone she called was either not accepting calls or the voicemail was not working. On February 17, 2015, the paternal grandmother left a message for the social worker stating that Biological Father had been in jail since the beginning of the year.

On March 26, 2015, Biological Father appeared in court in this case for the first time. He requested presumed father status and family reunification services. The Agency recommended in a report that Biological Father's requests be denied. The recommendation was based on the lack of any relationship between Biological Father and Infant, including his failure to take Infant into his home or provide the child any support.³ The Agency was unable to substantiate Biological Father's claim that he had held the child out as his own on social media websites. The Agency was also concerned about Biological Father's history of substance abuse and domestic violence. It noted that he consistently ignored a restraining order that was to prevent him from contacting Infant and his mother.

The Agency did not believe that providing Biological Father family maintenance services would be in Infant's best interests. Biological Father made no effort to contact the Agency between Infant's detention in July 2014 and September 19, 2014. He never visited the child. Neither did he try to come to court before he was incarcerated, despite having notice of the dependency, detention, and review hearings.

The juvenile court considered Biological Father's legal status in a hearing held June 16, 2015. The paternal grandmother testified that she, Biological Father, and her daughter were present at Infant's birth. Biological Father cut the baby's umbilical cord. He held him. When the mother was discharged from the hospital, she and Biological Father picked her up. They visited with the child for about an hour while they waited for

³ P.F. was unable to produce proof of his claim that he purchased a crib for the child.

the mother to be discharged. Paternal grandmother also testified that Biological Father posted pictures and indicated that he was happy to be a father on his Facebook account. She went with Biological Father to purchase baby supplies, such as Pampers, clothing, bottles and formula. At first, the paternal grandmother testified that Biological Father purchased a crib and a car seat, but she later corrected herself. The crib was donated to them and she paid for the car seat. Biological Father also told relatives and friends that Infant was his child.

On cross-examination, paternal grandmother testified that Biological Father had not completed any forms concerning his relationship to Infant while he was at the hospital. She also testified, in response to the court's questioning, that Biological Father was aware that Infant had been taken by the Agency for placement.

Biological Father also testified at the hearing. He attended Infant's birth, cut the umbilical cord, and held the baby for approximately five minutes. He signed some papers. He is certain he did not sign the birth certificate, which he was supposed to sign the day after Infant was born, but did not do so because of the restraining order. He speculates that he may have signed a form stating that he is the child's father, but not the birth certificate. He did not obtain a copy of what he signed. Notwithstanding the restraining order, he returned to the hospital when the mother was discharged. That's when he learned that Infant was not coming home with them. He purchased diapers, formula, bottles and blankets for the child. He told family and friends, and posted on Facebook that Infant was his son.

On cross-examination, Biological Father disputed the accuracy of the statement in the report that one of his contact phone numbers was not functioning. Other than that, he confirmed all the other facts in the report, including that he was aware of this dependency case. He confirmed that over the year before the hearing he had been in custody twice—once for a probation violation and once for domestic violence. He was still in custody at the time of the hearing on a probation violation and facing trial for auto theft and evading a police officer. Biological Father had never seen his son since he held him in the hospital shortly after his birth.

Biological Father had previously testified that he knew about earlier court dates in this case, but he did not attend them because he was concerned he would be arrested due to an outstanding warrant. He claimed that he attempted to contact the social worker while he was in custody but the Agency did not accept collect calls. He conceded, however, that he had no valid explanation for not writing the social worker to inquire about the case at that time.

At the close of the hearing the juvenile court denied Biological Father's request to elevate his status to presumed father. Responding to Biological Father's testimony that the day he learned that Infant was not coming home with him "was the worst day of [his] life," the juvenile court said:

You know . . . if this was the worst day of his life, he certainly extended it himself to almost a year.

This child—he saw the child when the child was born, he knew that the child was being taken by Social Services, he was very upset about that, and then he proceeded to do nothing. He hadn't seen the child.

If he bought anything, it didn't go to the child. It's still at the grandmother's house. It was never given to the child. This is pretty sad, pretty sad.

The worst day of his life, he made the worst year of his life, then, because he had no contact with the child, has no relationship with the child, held himself out as the father for about five minutes, and that's it. That's all we have.

I don't find him credible in some of the phone call issues. He is a very experienced young man in the criminal justice system. I think he knows how this operates very well, from many different vantage points, incarceration, and I do not find some of his testimony credible.

Also, I do not find he is raised to the level of presumed. He is a biological father, and that's all.

The juvenile court then set a section 366.26 hearing for July 28, 2015. On June 18, 2015, Biological Father filed a timely notice of intent to file writ petition. The record was filed

in this court on July 7, 2015, and the petition was thus due July 22. We stayed the section 366.26 hearing and ordered that the response to the petition be filed by August 6, 2015. County Counsel requested more time to file the response, and it was filed on August 17, 2015. No party has requested oral argument. County counsel has informed us that the juvenile court has rescheduled the section 366.26 hearing for October 6, 2015.

DISCUSSION

Biological Father argues that (1) there was no substantial evidence to support the juvenile court's denial of his request to be the presumed father, (2) the juvenile court erred when it set the section 366.26 hearing without substantial evidence that he was an unfit parent, and (3) the juvenile court's ruling is counter to the legislative intent to preserve families intact.

I. THERE IS INSUFFICIENT EVIDENCE TO CONCLUDE THAT BIOLOGICAL FATHER IS ENTITLED TO BE INFANT'S LEGALLY PRESUMED FATHER.

A completed voluntary declaration of paternity in compliance with statutory requirements entitles a father to presumed father status in dependency proceedings. (*In re Liam L.* (2000) 84 Cal.App.4th 739, 745; see *In re Levi H.* (2011) 197 Cal.App.4th 1279, 1289.) Biological Father argues that the evidence showed he executed such a declaration at the hospital when Infant was born. Apparently aware that this evidence may be equivocal, he argues the juvenile court did not properly direct the Agency to inquire into parentage to evaluate his testimony that he signed a declaration of paternity. Accordingly, his testimony on the point should have been accepted, and there is no evidence supporting the juvenile court's contrary conclusion.

We review the juvenile court's determination of parentage for substantial evidence. (*In re M.C.* (2011) 195 Cal.App.4th 197, 213.) We indulge all reasonable inferences in favor of the juvenile court's decision. (*Garrett v. Duncan* (1959) 176 Cal.App.2d 296, 298–299.) Moreover, as argued by the Agency, a father who claims he is entitled to presumed father status bears the burden of establishing the facts supporting his claim by a preponderance of the evidence. (See *In re T.R.* (2005) 132 Cal.App.4th

1202, 1210.) Our review of the evidence shows that Biological Father did not meet his burden, and that the juvenile court directed a suitable inquiry.

No copy of the purported declaration of paternity was produced or admitted into evidence. Moreover, the juvenile court did file a paternity inquiry form on June 2, 2015, which specifically requested whether paternity was established via a voluntary declaration. Biological Father's mother testified that he did not sign any documents at the hospital related to parentage. During cross examination Biological Father was unsure what he had signed. He knew he signed "something" that was not the birth certificate and since he "didn't know what else you sign," he deduced he must have signed a paternity declaration. On these facts, the juvenile court's implied finding that there was no paternity declaration is supported by substantial evidence.

II. THE ABSENCE OF ANY JUVENILE COURT FINDING THAT BIOLOGICAL FATHER IS AN UNFIT PARENT DID NOT VIOLATE HIS DUE PROCESS RIGHTS.

"California differentiates between the rights of presumed, natural and alleged fathers, and ' "[p]resumed father status ranks the highest. Only a 'statutorily presumed father' is entitled to reunification services under . . . section 361.5, subdivision (a) and custody of his child under . . . section 361.2." ' ' ' ' (*In re Cody B.* (2007) 153 Cal.App.4th 1004, 1009 citing *In re Mary G.* (2007) 151 Cal.App.4th 184, 197.) Where there is no presumed father, the sole criterion courts use to determine if a biological father should be allowed to keep his parental rights is the best interest of the child. (*Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 824.)

In order to require a court to entertain a fitness determination for a biological father, the father must have demonstrated "a full commitment to his parental responsibilities—emotional, financial, and otherwise." (*Adoption of Kelsey S., supra*, 1 Cal.4th at p. 849.) The juvenile court is to consider whether the father has "done all that he could reasonably do, *under the circumstances*." (*Id.* at p. 850 [original italics].) The statutory distinction between natural and presumed fathers is valid unless the unwed father has "sufficiently and timely demonstrated a full commitment to his parental responsibilities" and the provisions of Civil Code sections 7004 and 7017, subdivision

(d)(2) pass constitutional muster when applied to a father who has not done so.⁴ (*Id.* at 849–850.)

Here, the juvenile court found that Biological Father did very little to establish a relationship with his son. He saw Infant at birth, learned that the child was being taken by social services, but did nothing about it. Whatever few baby supplies he purchased were never actually received by the child. He made minimal efforts to hold the baby out as his own.

The juvenile court did not believe Biological Father’s account of his attempts to contact the social worker while he was incarcerated and he admitted that when he was out of custody he avoided appearing in the dependency proceedings because he was afraid he would be arrested. Indeed, he testified that it was “stupid,” he did not contact social services by letter or telephone because of his outstanding warrant. While Biological Father’s ability to interact with Infant was limited when he was incarcerated, he barely did anything to build a relationship with Infant when he was not in custody.⁵

Where a biological father, who is not a presumed father, has not fully accepted his parental responsibilities and has not been meaningfully involved in the child’s life for a significant amount of time, no due process violation occurs when his parental rights are terminated without a finding that he is unfit. (*In re A.S.* (2009) 180 Cal.App.4th 351, 362–363; see *In re Ninfa S.* (1998) 62 Cal.App.4th 808, 811–812.) Because of the minimal efforts Biological Father made to have a relationship with his son, the juvenile court did not violate his due process rights when it denied him reunification services without finding him to be an unfit parent.

⁴ Former Civil Code section 7004, dealing with presumed parentage, is continued in Family Code sections 7611, 7611.5 and 7612 without change. Civil Code section 7017 was also repealed, effective January 1, 1994.

⁵ Although P.F. did not always honor it, we recognize that the restraining order issued against him, at least theoretically, impaired his ability to be with his child. However, nothing in the record indicates that he attempted to have the restraining order modified. Even so, the restraining order was not an impediment to his doing such basic things as contacting the Agency or coming to court in the dependency case.

III. THE JUVENILE COURT DID NOT IMPERMISSIBLY IGNORE THE LEGISLATIVE GOAL OF FAMILY PRESERVATION.

P.F. argues that the juvenile court's order contradicts the legislative intent to preserve families. He cites *Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322, 1328 for the proposition that there is a legislative mandate to preserve the family as well as to protect the safety and physical and emotional well-being of the child. However, family preservation was not achieved here because of Biological Father's lack of efforts to be with and meaningfully and consistently support his infant son. The juvenile court's order does nothing to violate the legislature's mandate. Although Infant was born more than one year ago, other than the days around his birth, Biological Father has never seen him. He has never effectively supported him. Although there were legal and practical obstacles to his doing so, arising from his confinement and the restraining order, Biological Father did not take even minimal steps to contact the Agency or appear in juvenile court when he was not in custody. The juvenile court did not violate the legislative mandate to preserve families when possible.

DISPOSITION

The petition for an extraordinary writ is denied. The stay issued by this court on July 22, 2015, is dissolved. To expedite the prompt resolution of this case, our decision is immediately final as to this court. (Cal. Rules of Court, rules 8.452(i), 8.490(b)(2)(A).)

Siggins, J.

We concur:

Pollak, Acting P. J.

Jenkins, J.

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